limited liability. How far these considerations should move the courts when there is very material departure from the requirements for incorporation is debatable, but the procedural convenience, avoidance of inquiry into details of incorporation, and fairness to all parties may well override a fairly strong legislative policy against treating the associates as though incorporated.

The principal case presents another situation. Between the commission of the tort and the bringing of the suit, the *de facto* corporation has become *de jure*. To allow recovery against the *de jure* corporation is to grant a right against its assets to parties who have a valid remedy elsewhere, to the prejudice of creditors whose claims were acquired by dealing with the new corporation and whose only remedy is, therefore, against those assets. It imposes a pre-natal obligation upon the corporation and is analogous to allowing recovery against it for the tort of its promoters, which is clearly not permitted.[17] The holding of the principal case is therefore indefensible.

RECENT CASES

AGENCY — PRINCIPAL'S LIABILITY TO THIRD PARTY IN CONTRACT — WHERE THIRD PARTY THINKS AGENT IS NOT WITHIN HIS AUTHORITY. — The plaintiff's agent had authority to make contracts without confirmation by his principal. The agent entered into a contract with the defendant on behalf of the plaintiff. In an action by the plaintiff on another transaction, the defendant seeks to recoup for breach of this contract. The court instructed the jury that unless the defendant knew that the agent had authority to contract without confirmation, and relied on such authority, there was no contract. *Held*, the instruction was erroneous. *North Alabama Grocery Co.* v. *J. C. Lysle Milling Co.*, 88 So. 590 (Ala.).

The case decides for the first time, it is believed, whether a good contract results when an agent and a third party purport to make a contract which the latter mistakenly believes not to be within the scope of the agent's authority. The result could clearly not be reached on grounds of estoppel. But, as is now generally recognized, the fundamental principle on which the law of agency rests is not estoppel, but identity, *viz.*, that the acts of an agent within the scope of his authority are the acts of his principal. See *Watteau* v. *Fenwick*, [1893] 1 Q. B. 346; *Kinahan & Co., Ltd.* v. *Parry*, [1910] 2 K. B. 389. The principal case is merely a logical application of this doctrine. Nor is the opposite result required by principles of contract, because of the belief of the third party that he was not entering into a binding obligation with anyone. In the face of his expressed intent to contract, his silent mental attitude is immaterial. See 1 WILLISTON, CONTRACTS, §§ 21, 22.

BANKRUPTCY — JURISDICTION OF FEDERAL COURTS — POWER OF THE DIRECTORS OF A CORPORATION TO FILE A VOLUNTARY PETITION AFTER THE APPOINTMENT OF A RECEIVER BY THE STATE COURT. — A corporation, by its directors, filed a voluntary petition in bankruptcy, and was at once adjudicated and a receiver appointed. It then appeared that a few days previous to these proceedings a state court of proper jurisdiction had, upon petition

[17] Stewart *v.* Mynatt, 135 Ga. 637, 70 S. E. 325 (1911).

of stockholders, appointed a receiver over the corporation on the ground that the directors and officers were guilty of fraud and mismanagement. This receiver now prays that the federal court's adjudication and appointment of a receiver be set aside. *Held*, that the federal proceedings be annulled. *Matter of Associated Oil Co., Bankrupt*, 46 Am. B. R. 482 (E. D. La.).

For a discussion of the principles involved, see NOTES, *supra*, p. 195.

BILLS AND NOTES — PURCHASERS FOR VALUE WITHOUT NOTICE — RECOVERY OF STIPULATED ATTORNEYS' FEES BY PLEDGEE WHERE MAKER HAS DEFENSE AGAINST PAYEE. — A note made by the defendant, containing a stipulation for the payment of ten per cent as attorneys' fees, in case it should be placed in the hands of an attorney for collection, was transferred by the payee to the plaintiff as collateral security for credit then advanced. A defense of fraud by the payee was proved. The amount of the note was greater than the debt it was pledged to secure. *Held*, that the plaintiff be allowed to recover the amount of his claim against the payee, plus ten per cent thereof as attorneys' fees. *Butler Bros.* v. *Dunsworth*, 233 S. W. 311 (Tex. Civ. App.).

It is well settled that the *bona fide* pledgee of a note to which the maker has a defense, may recover only the amount of the debt secured. *Stoddard* v. *Kimball*, 6 Cush. (Mass.) 469; *Elk Valley Coal Co.* v. *Third Nat. Bank*, 157 Ky. 617, 163 S. W. 766. See NEGOTIABLE INSTRUMENTS LAW, § 27. It would seem that the logic of the rule stated is this: the pledgee is a holder in due course, but if he recovered the full amount of the note he would have to hold everything above the amount of the debt secured, in trust for the pledgor; the maker could recover that amount from the wrongful pledgor; hence to avoid circuity of action he is given a direct defense against the pledgee. See *Stoddard* v. *Kimball*, *supra*, at 471, 11 HARV. L. REV. 194. See also *Maitland* v. *Citizens' Nat. Bank*, 40 Md. 540; *Bailey* v. *Inland Empire Co.*, 75 Ore. 309, 146 Pac. 991. On this reasoning the pledgee's recovery is limited to the amount of the pledgor's debt, as determined by the agreement between him and the pledgor. This is in every case a question of fact. Perhaps it is possible, by implication, to incorporate into this agreement the provision as to attorneys' fees, where, as in the principal case, the note is pledged as security for a present advance. But where it is pledged as security for an antecedent debt, the stipulation for the payment of ten per cent, if the note is placed with an attorney for collection, can have no effect upon the original agreement between pledgor and pledgee. See *Citizens' Bank* v. *Limpright*, 93 Wash. 361, 160 Pac. 1046. The particular point does not appear to have been adjudicated before.

CONFLICT OF LAWS — DOMICIL — EFFECT OF ABANDONMENT OF DOMICIL OF CHOICE. — Decedent, born in Wales of parents who were domiciled there, left, when thirty-three years of age, for America. He married, settled in Iowa, and remained there for thirty-two years, having become a naturalized citizen of the United States. He left Iowa with fixed present intent to return to and re-establish his home in Wales. He was drowned *in itinere*. The question was, which law governed the disposition of his personal property. *Held*, that the decedent was domiciled in Iowa at the time of his death, and that the law of that jurisdiction should govern. *In re Jones' Estate*, 182 N. W. 227 (Ia.).

For a discussion of the principles involved, see NOTES, *supra*, p. 189.

CONSTITUTIONAL LAW — DUE PROCESS — VALIDITY OF RETROSPECTIVE LEGISLATION. — Action was begun September 2, 1920, to recover for fraud alleged to have occurred August 20, 1912. The six-year period allowed by statute had expired on August 20, 1918, but the method of computation was